Appendix XVII
FAQs: Mitigating Reputation Risk

1. What major steps can I take to avoid risks to USAID's reputation in a PPA?

A properly researched, defined, negotiated, managed and publicized alliance is the best defense against risk to the Agency's reputation. Careful attention to the following will avoid most difficulties:

1. Preconditions for Success: An Alliance Checklist and Alliance Precepts
Common cause, inclusion and commitment (including financial), based on principled behavior and transparency, will limit ambiguity and bring potential problem areas to light early in the process.

2. Due Diligence (Constructing Alliances Section): Potential private sector partners may have some negative press and past experiences. It is critical to analyze the context of past grievances. For example, if the company is involved with lawsuits that are directly connected to the objective of the proposed alliance, forgoing an alliance with that partner may be wise.

- Private sector partners will also be seeking some financial or business benefit from the alliance, even if it is just an improved corporate social responsibility (CSR) image. USAID alliance builders should be able to clearly articulate their partners' interests. Mitigating risk means being informed about your partners' motives and interests.

3. Agreement - Memorandum of Understanding (MOU) (Constructing Alliances Section): Well-prepared MOUs reduce alliance ambiguity and thus reputation risk.

- Not all alliance partners must be named in an alliance MOU. If it is necessary to keep more of a distance from certain partners, alliance builders have the option of naming "first" tier partners in the MOU, while leaving reference to "second" tier partners out.

4. Managing Alliances: Agreeing upfront on specific roles and responsibilities, key elements of governance (e.g. frequency of meetings) and mechanisms for resolving differences equips alliance builders to navigate difficult situations downstream.

5. Publicizing the Alliance (Managing Alliances Section): Alliance partners should anticipate reputation risk issues in advance and identify the key audiences that could exploit any potential alliance weaknesses or negative appearances.

PPAs that lack these basic elements- coordinated problem definition, clear understanding of alliance partner interests, significant commitment and accountability by all partners and effective alliance management- are not only ineffective at reaching sustainable development objectives, but they draw undue attention to potential "gray" areas. Alliance builders protect the Agency's reputation by following alliance best practices, with a focus on sustainable outcomes.

2. **Can I enter a PPA that is core to the business of my private sector partners? What if my partners stand a chance of gaining a direct financial reward as a result of their alliance with USAID?**

Yes, USAID may enter such an alliance, provided a legitimate development purpose exists and the USAID investment is carefully selected. However, United States Government (USG) funds may never be used to directly engage in profit-making. USAID mitigates its risk in alliances that present the potential for partners to profit by clearly establishing development objectives, by defining how such an alliance best achieves the expected results and by investing in a facilitating mechanism via a civil society partner.

For example, a U.S agribusiness firm stood to benefit financially from the creation of a processing plant. To facilitate the project - which was given high priority by the local government, also a partner in the alliance - USAID funded research at a national agricultural research institute in order to identify viable sugarcane strains for the project area. As an alliance partner, the agribusiness firm used the research to complete its due diligence and to secure capital financing. In this case, allowing the agribusiness firm the prospect of financial benefit was determined to be a reasonable trade-off, considering no other industry players were willing to take the risk of establishing in-country growing and processing of this specific commodity. Further, the alliance project is expected to meet and exceed economic growth objectives by creating more than 3,000 new jobs and by stimulating growth in a new industry sector in which the country may have comparative advantage.

If alliance builders deem it necessary to further distance USAID from any potential controversy regarding the earning of income by an alliance partner, they might consider requiring the reinvestment of profit as "program income" to be used for follow-up activities. Depending on the nature of the alliance, this may be facilitated by using standard provisions for program income in the grant to the NGO implementing partner.

Of note, the US Trade and Development Agency (USTDA), which promotes US commercial interests and host country development objectives in developing and middle income countries, requires US firms receiving USTDA grants to reimburse part or all of USTDA's funding if an individual project is implemented and if the company receives substantial economic benefit. These commitments are included in a letter agreement between USTDA and the company. Alliance builders might consider how such an arrangement could be applicable in a USAID PPA setting.

3. **Can USAID help finance the creation of a profit-making enterprise as part of an alliance, such as a processing plant?**

Yes, provided a legitimate development purpose exists, and after exploring multiple investment alternatives, USAID could enter an alliance to aid in the financing or building of a processing plant or operation. As noted earlier, however, USG funds can never be used to directly engage in profit-making. Thus no profit may be retained by the profit-making enterprise during the life of the assistance award. An alliance of this sort would require a specific plan to avoid profit making during the life of the award or a mechanism to reprogram profits during the life of the award.

A familiar scenario for this type of PPA has arisen in agriculture-based economies which are attempting to move from a "grow-harvest-export" model to a "grow-harvest-**process**-export" model in order capture greater economic value in-country. Often, local private sector capital is not available and few private sector firms are willing to risk starting such operations due to poor business infrastructure.

In determining how best to approach such situations, alliance builders should first explore investment options outside of financing the actual plant. Critical questions to consider include:

- Can alliance funds be used in a facilitative way to address finance impediments or business infrastructure improvements?
- Rather than investing in the actual building of the plant, can USAID funds be used to add legitimacy to the project in order to secure financing, such as in providing market research? Is there another way to draw in private or multi-development bank financing?

If USAID monies - implemented through a capable NGO - are to be used in the actual building or financing of a plant, what is the plan for complying with profit restrictions (as described above), for mitigating against reputation risk and for avoiding potential negative effects in the marketplace?

- What is the plan for "reinvesting" program income or profit during the life of the assistance award?
- What is the plan for transferring ownership after the plant is built and before it engages in profit making activities?
- How will you ensure broad enterprise ownership by key stakeholders- especially local stakeholders?
- What is the exit strategy, so that investment in an actual plant is a one-time intervention?
- What is the plan for stimulating growth in related sectors, such as supply chain participants?
- How do we prevent picking a winner or creating a monopoly?

In short, alliances of this sort are technically possible, but alliance builders must plan well to comply with the law, avoid reputation risk, reprogram any potential profits during the life of the assistance and ensure equitable ownership once the project is complete.

4. **Can I enter an exclusive alliance with a private sector partner, rather than opening it up to multiple private sector players in a given industry?**

Prior to the submission of a formal alliance application, alliance builders are free to explore potential alliances (exclusively or not) with any private sector entity. Once a formal application is submitted, then the standard process for unsolicited applications is to be followed.

In some situations, a private sector entity may be interested in entering an exclusive PPA with USAID as a resource partner. While alliance builders should explore the inclusion of other private sector players, an "exclusive" alliance of this sort is acceptable, provided programmatic need exists and proper due diligence is conducted.

In other situations, a for-profit partner might possess a unique skill, technology or capability that is of particular programmatic and development interest to USAID, but from the partner's perspective would require an "exclusive" PPA. In a clean water alliance, for example, USAID agreed to limit for-profit participation to only one partner. This partner had invested heavily in researching and developing a proprietary technology for the elimination of water-borne diseases, even though market demand was questionable. No other competitor had developed a product based on the same technology. Because it was a key programmatic goal for USAID to test new and potentially far reaching technologies for water purification, it was determined that an "exclusive" type PPA with this partner was a reasonable trade-off. (i.e. there was only one for-profit alliance partner.)

In such "exclusive" PPAs, USAID mitigates risk by investing in the alliance through a civil society partner, rather than in the for-profit enterprise itself. In such cases, the reputations and skills of civil society partners take on additional importance in adding credibility to the alliance. Strong civil society partners add transparency and focus efforts on institutional reform and on stimulating local competition. In the example above, USAID funded an outside implementing partner to conduct market research and to purchase product from the previously mentioned company.

Alliance builders may accept exclusive-type applications and enter into exclusive-type alliances, but significant programmatic need should exist to exclude other for-profit entities, particularly if USAID decides to fund the for-profit enterprise directly. In most "exclusive" PPA cases, however, USAID mitigates risk by investing in a civil society partner, rather than in the for-profit enterprise itself.

5. Can USAID promote or purchase a specific product or brand via a PPA?

The USG cannot promote, endorse or market a particular product or entity.

However, under certain conditions, alliance builders might fund the market testing of a particular product or technology and even facilitate the purchase of a specific product through grant funds. For example, under "predominant capability," (ADS 303.5.5d.3) competition requirements may be waived in order to deal with an exclusive product or service provider.

In the case of the water alliance mentioned in the previous section, USAID funds were used to buy and test market a product - the only product of its kind on the market - via an outside actor. Because this partner possessed predominant capability - no competitors had developed a competing product based on the same technology - purchase competition was waived. Without paying for this specific product (via a grant to civil society partner), USAID would not have been able to test the technology in target countries, and the partner would not have done it on its own without a more promising business case.

Before "endorsing" or appearing to endorse a specific product through an alliance, alliance builders should exhaust other available options. Typically, broad mechanisms exist to create market demand or to identify technical solutions to development problems. One alliance built generic demand for quality mosquito nets by facilitating broad manufacturer participation via a quality seal program. In this case, several industry participants signed on to the alliance, since they stood to influence the standards to their favor.

6. If USAID funds research as part of a PPA, who retains patent or property rights as a result of the funding? Can USAID select an alliance partner to commercialize the technology, patent or intellectual property?

As a general rule, USAID retains non-exclusive, irrevocable license to use intellectual property developed with USAID funds. However, specific rules vary according to intellectual property type (i.e. patent vs. copyright) and grant recipient (e.g. university vs. NGO research organization, etc). For specific guidance on USAID rights retained, first look to the standard provisions of the contemplated agreement, then contact your contracting officer or legal advisor for further information.

In some PPA circumstances, it makes sense for USAID to fund the research or development of intellectual property at a research institution, with a private sector partner agreeing to purchase commercial rights (from the research institution) in order to market the technology or product. In a vaccine alliance, for example, USAID funded research at a research institution to identify a vaccine to address a life-threatening disease inflicting livestock. A partner agreed to purchase commercialization rights and to market the product. Considering the significant costs associated with commercializing the vaccine and the important development impact, it was a reasonable trade-off for USAID to fund research that would be purchased by the commercial sector partner on an "exclusive" basis in targeted markets.

7. Are there any industries USAID should never enter an alliance with?

It is not wise for USAID to enter alliances with organizations whose reputation would adversely affect the overall mission of USAID or specific activities, regardless of the industry. In all cases, USAID alliance builders should conduct adequate due diligence based on the guidelines found in Tools for Alliance Builders. Certainly, the nature of their core businesses will heavily influence the corporate social responsibility objectives of prospective partners.

8. Are there any circumstances under which USAID could enter alliances with subsidiaries or joint ventures (JV) of companies with which we have due diligence concerns?

Circumstances are conceivable under which USAID would enter an alliance relationship with a subsidiary, sister company or JV of a company with which we have due diligence concerns. For instance, a well-known partner in a USAID alliance is a subsidiary of a company with which USAID has due diligence concerns. This alliance partner is one of several corporate alliance partners, which has an interest in promoting the production and marketing of a commodity and in improving market access and income for small-scale producers.

In this alliance and others like it, USAID alliance builders mitigate the risk to USAID's reputation by:

- Assessing the extent to which the prospective partner is committed to CSR. What other programs is the company implementing to improve its CSR track record?
- Defining the particular development value the prospective partner brings to the alliance.
- Structuring the alliance so that it has broad appeal across the targeted sector. Having participation by several industry players will mitigate the effects of one partner with potentially damaging corporate relationships.
- Clearly understanding the nature of business relationships. How many degrees of separation exist between the offending company and your potential partner? How integrated are the companies? What is the potential for a public relations disaster? Are there ways to structure the deal to mitigate exposure of potentially damaging relationships? Being able to answer these questions and respond to them in a persuasive way is critical to knowing whether to enter an alliance of this nature.

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